



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R10-OAR-2019-0403; FRL-10002-75-Region 10]

Air Plan Approval; ID; Update to CRB Fee Billing Procedures

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve state implementation plan (SIP) revisions submitted by the State of Idaho's Department of Environmental Quality on June 5, 2019. The revisions implement changes to the timing of when fees for open burning of crop residue are paid. The changes provide Idaho Department of Environmental Quality a more streamlined administrative process and were based on recommendations from Idaho's Crop Residue Advisory Committee.

DATES: This rule is effective on **[Insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R10-OAR-2019-0403. All documents in the docket are listed on <https://www.regulations.gov> web site. Publicly available docket materials are available either through <https://www.regulations.gov>, or please contact the person identified in the "For Further Information Contact" section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Randall Ruddick at (206) 553-1999, or ruddick.randall@epa.gov, Environmental Protection Agency, Region 10, Air Planning Section, Air and Radiation Division, 1200 Sixth Avenue, Suite 155-15-H13, Seattle, Washington 98101-3188.

SUPPLEMENTARY INFORMATION: Throughout this document whenever “we,” “us,” or “our” is used, it is intended to refer to the EPA.

Table of Contents

- I. Background
- II. Response to Comment
- III. Final Action
- IV. Incorporation by Reference
- V. Statutory and Executive Order Reviews

I. Background

On June 5, 2019, Idaho submitted a SIP revision request to the EPA. The SIP submittal contains two revisions to the federally-approved crop residue burning (CRB) rules. Specifically, fee due dates in IDAPA 58.01.01.620.01 were changed from “at least seven (7) days prior to the proposed burn date” to “within thirty (30) days following the receipt of the annual burn fee invoice.” This revision does not change the burn fee amounts, rather it only changes when the fee is due. Idaho revised IDAPA 58.01.01.620.02 to clarify that IDEQ will not accept or process registration for a permit by rule to burn from any person with delinquent burn fees, in full or in part. Idaho Code 39-114 (codification of Idaho Senate Bill 1024, Section 4) was revised by removing the requirement that payment be made prior to burning to align with revisions to IDAPA 58.01.01.620.01.

These revisions do not change fee structure amounts and do not change the timing of the fee payment for spot and bale burn permits required under IDAPA 58.01.01.624.02.a. All other CRB requirements remain unchanged.

EPA published a direct final rule on September 3, 2019 (84 FR 45918), approving Idaho’s requested revisions to the SIP, along with a proposed rule (84 FR 45930) that provided a 30-day public comment period. EPA received one anonymous comment during the public comment period. Consequently, the direct final rule on this approval was withdrawn on October

21, 2019 (84 FR 56121). After consideration of the comment, we do not believe any changes in the rationale or conclusions in the proposed approval are appropriate. A summary of the comment as well as EPA's response is described below.

II. Response to Comment

Comment:

The EPA received one comment. The commenter acknowledged that the EPA's action only addressed the timing of CRB fees payment, but stated that the commenter is "concerned as to whether or not the environment is being fully considered." The commenter's main concerns relate to failure to pay and that the proposed change "may also provide incentive for future fee evasion." The commenter states paying fees prior to burning ensures fees are paid while allowing payment after the burn does not ensure payment; and asserts that "Ensuring payment should precede streamlining payment processes."

Response: We disagree with the commenter's assertions IDEQ's revisions to the CRB rules provide an incentive for fee evasion and promote environmental degradation. First, the substantive requirements for conducting open burning in Idaho have not changed. IDAPA 58.01.01.622 General Provisions states "All persons intending to dispose of crop residue through burning shall abide by the following provisions." The provisions include a requirement that IDEQ has designated that day as a burn day based on meteorological and ambient air conditions and that the permittee has received an individual approval specifying the conditions under which the burn may be conducted. In addition, IDAPA 58.01.01.622.01.f requires anyone intending to burn crop residue to attend a crop residue burning training session. Second, the rules contain significant disincentives to evade or fail to pay fees after receiving permission to burn. IDAPA

58.01.01.620.02 provides that IDEQ will not accept or process a registration for a permit for any person having delinquent fees, in full or part. In addition, anyone burning in violation of the CRB rules is subject to a fine of up to \$10,000 for each violation under Idaho Statute 39-108(5). We, therefore, have not made any changes to the rationale or conclusions in the proposed approval based on the comment received.

III. Final Action

The EPA is approving, and incorporating by reference in Idaho's SIP, revisions to Idaho's CRB fee regulations as requested by Idaho on June 5, 2019 to the following provisions:

- IDAPA 58.01.01.620 (Burn Fee, state effective April 11, 2019); and
- Idaho Code 39-114 (Open Burning of Crop Residue, state effective February 26, 2019).

We have determined that the submitted SIP revisions are consistent with section 110 of the Clean Air Act (CAA).

IV. Incorporation by Reference

In this rule, the EPA is approving regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, we are incorporating by reference the provisions described above in Section III. Final Action. The EPA has made, and will continue to make, these documents generally available electronically through <http://www.regulations.gov> and at the EPA Region 10 Office (please contact the person identified in the "For Further Information Contact" section of this preamble for more information). Therefore, these materials have been approved by the EPA for inclusion in the State Implementation Plan, have been incorporated by reference by the EPA into that plan, are fully Federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of the EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because this action does not involve technical standards; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: November 14, 2019.

Chris Hladick,
Regional Administrator,
Region 10.

For the reasons set forth in the preamble, 40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart N—Idaho

2. Amend§ 52.670, in the table in paragraph (c) by:

a. Revising entry for “620”; and

b. Under the heading “State Statutes”:

i. Removing the entry for “Section 3 of Senate Bill 1009, codified at Idaho Code Section 39-114”; and

ii. Adding an entry for “Section 4 of Senate Bill 1024, codified at Idaho Code Section 39-114”.

The revisions and addition read as follows:

§ 52.670 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED IDAHO REGULATIONS AND STATUTES

State citation	Title/subject	State effective date	EPA approval date	Explanations
Idaho Administrative Procedures Act (IDAPA) 58.01.01—Rules for the Control of Air Pollution in Idaho				
*	*	*	*	*
620	Burn Fee	4/11/2019	[Insert date of publication in the <u>Federal Register</u>], [Insert <u>Federal Register</u> citation]	
*	*	*	*	*
State Statutes				

Section 4 of Senate Bill 1024, codified at Idaho Code Section 39-114	Open Burning of Crop Residue	2/26/2019	[Insert date of publication in the <u>Federal Register</u>], [Insert Federal Register citation]	

* * * * *

[FR Doc. 2019-26397 Filed: 12/6/2019 8:45 am; Publication Date: 12/9/2019]